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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 29th August 2007

No. 10136-1i/1-(B)-66/1996/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 11th May, 2007 in I.D. Case No. 174 of 1996 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of U.P. State Handloom Corporation Ltd., Bhubaneswar and its workman Mr. M. R. Ahmed was referred for adjudication is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT : BHUBANESWAR.

INDUSTRIAL DISPUTE CASE No. 174 OF 1996

Dated the 11th May, 2007

Present:

Shri S.K. Mohapatra, O.S.J.S. (Jr.Branch),
Presiding Officer,
Labour Court,
Bhubaneswar.

Between:

The Management of U. P. State
Handloom Corporation,
Bhubaneswar.

... First-Party — Management

And

Their Workman
Mr. M. R. Ahmed

... Second-Party — Workman

Appearances :

Shri R. B. Yadav.

... For First-Party — Management

Mr. M. R. Ahmed

... For Second-Party— Workman himself.

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of U. P. State Handloom Corporation Limited, Bhubaneswar and their workman Shri M. R. Ahmed under Notification No. 7559/LE., dated the 27th June, 1995 vide Memo No. 17588(5)/LE., dated the 13th December, 1996 for adjudication by this Court.

2. The terms of reference by the State Government is as follows :

“ Whether the action of the Management of U. P. State Handloom Corporation Limited, Bhubaneswar in terminating the service of Mr. M. R. Ahmed, Salesman, with effect from the 31st October, 1993 is legal and/or justified ? If not, what relief he is entitled to ?”

3. Shorn of all unnecessary details, the case of the workman is as follows :

The U. P. State Handloom Corporation Limited is a reputed business organisation having its branch all over India including in the State of Orissa in an ‘industry’ within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the I. D. Act). The workman had been appointed as a Salesman under the Management in December, 1985 and he had been working continuously under the Management being posted at different places when his service was illegally retrenched on 31st October, 1993. The workman was working sincerely and there was never any charge of misconduct against him. The Management retrenched the service of the workman without any justifiable reason. Since the workman had worked continuously under the Management for more than 8 years, he made repeated requests for regularisation of his service but the Management instead of accepting his legitimate demands, illegally terminated his service in a whimsical manner. The Management had neither given one month’s notice nor any notice pay in lieu of notice and did not give any retrenchment compensation to the workman violating the provisions under Section 25-F of the I. D. Act. On these averments, the workman has claimed for his reinstatement in service with full back wages.

4. In his written statement, the Branch Manager of the Management has contended that the workman had been engaged by the Management temporarily as a Salesman and his engagement was provisional subject to deputation of regular staff to be sent from the Corporate Office. When the regular staffs were deputed from the Corporate office in the year 1993, there was no necessity of continuance of the service of the workman and therefore, he was dis-engaged from his service. Thereafter on the request of the workman, the Management engaged the workman on daily wage basis as and when necessity arose. The Branch Manager of the Management in his written statement has denied the pleadings of the workman and has contended that the workman is not entitled to any relief whatsoever.

5. The Managing Director of the Management has filed a separate written statement and has contended that the U. P. State Handloom Corporation Limited has its sale depots/show rooms all over India including one at Bhubaneswar. The Managing Director of the Management Corporation is the sole appointing authority of all employees who are appointed under proper letters of appointment under the signature of the Managing Director. The Regional Officers like Branch Managers have no authority to give appointment but they can only engage the labourers on daily wage basis as and when occasion arose and meet the work loads from time to time during festival seasons and other such periods. The appointment of such casual labourers expires automatically by efflux of time or by completion of work. It is further contended that there was no master and servant relationship between the Management and the workman. The workman of the instant case being a local man had been engaged temporarily as a Salesman subject to deputation of regular staff from Corporate Office. Since the engagement of the workman was purely temporary no order of appointment had been issued in his favour. The workman had been engaged temporarily by the Show-room in charge i.e. Branch Manager who does not have any competency to make recruitment. The power of the Branch Manager is limited to engage the workers on daily wage basis for a period not exceeding 60 days. In the instant case, the engagement of the workman was purely temporary and contractual and therefore, his dis-engagement due to non-renewal of contract of service did not amount to retrenchment within the meaning of the I.D. Act and therefore, the question of compliance of provisions of Section 25-F of the I. D. Act, while terminating the service of the workman, never arose.

6. On the basis of the above pleadings of the parties, the following issues have been framed for determination.

ISSUES

- (i) Whether the action of the Management of U.P. State Handlooms Corporation Limited, Bhubaneswar in terminating the services of Mr. M. R. Ahmed, Salesman, with effect from 31st October, 1993 is legal and/or justified ?
- (ii) If not, what relief he is entitled to ?

7. It is the pleadings of all the parties of this case that the Management Corporation is engaged in manufacture and sale of Handloom products throughout India through its own Sale depots/showrooms. It is also very pleading of the Management that such Sale depots are managed by some regular employees and when there is need of temporary hands, local people are engaged temporarily on daily wage basis. Therefore it is very much clear that the Management Corporation is engaged in systematic activity of sale of handloom products by co-operation between itself as an employer and its workmen and consequently the Management Corporation is very much an 'industry' within the meaning of Section 2(j) of the I.D. Act.

8. While the workman in his evidence as W.W.1 has claimed that he had been working under the Management Corporation as a daily wage worker, W. Ws. 2, 3 and 4 have stated that they had seen the workman working as a Salesman at Bhubaneswar Showroom of the Management Corporation. The Management on its part through evidence of M. W.1 and also through its pleading has admitted that the workman had worked under the Management on daily wage basis. Thus it is obvious that the workman of this case is a workman within the meaning of Section 2(s) of the I.D. Act and therefore, the dispute between the Management and the workman in the instant case is an industrial dispute as because the workman had challenged his retrenchment from service as illegal on the ground that he was in continuous service and therefore, he was entitled to the compliance of the provisions under Section 25-F of the I. D. Act by the Management who retrenched him from service in gross violation of such provisions of the I.D. Act.

9. In the decision of Range Forest Officer Vrs. S. T. Hadimani reported in 2002-I-LLJ. 1053, it has been held by the Hon'ble Apex Court to the effect that the onus of proving continuous service within the meaning of Section 25-B of the I. D. Act squarely lies on the workman. The classification of the said judgment reads as follows :

“ Termination of service – Workman claimed he had worked for 240 days and services terminated without paying retrenchment compensation – Appellant denied respondent workman worked for 240 days. Held. Tribunal not right in placing onus on appellant-Management without first determining that

respondent workman had worked for 240 days in preceding year. Claimant has to lead evidence to show that he had worked for 240 days in preceding year by producing receipt of salary or wages or letter of appointment – Mere filing of affidavit by claimant not sufficient evidence as it is in his own statement. “

Thus it is very clear that the burden of proof lies on the workman to show conclusively that he was in continuous service within the meaning of Section 25-B of the I. D. Act so as to claim entitlement of the benefit of Section 25-F of the I. D. Act.

10. In the premises the settled law as stated above, it is to be seen as to how far the workman has succeeded in proving his claim that he had worked continuously under the Management within the meaning of Section 25-B of the I. D. Act. Although the workman in his examination-in-chief has claimed that he had worked for 8 years continuously under the Management till the date of his termination on 31st October, 1993, in his cross-examination he has admitted that he was daily wage worker under the Management and that he had not received any order of appointment from the Management. Further evidence of W.W.1 himself is that he had received his wages for the days he had worked under the Management. The documents Exts.1 to 4 proved by the workman contained nothing to show that the workman had worked for 240 days in 12 months preceding to the date of the 31st October, 1993 on which his service was terminated. Ext.1 is the Xerox copy of the attendance register which is for the years 1987 to 1989 and in itself it does not prove the continuous service of the workman. Rather most of the pages of the Ext.1 are blank and does not give any indication of continuous service. Exts.2, 3 and 4 do not throw any light in the matter. The evidence of W. Ws. 2 to 4 are also of no help to prove conclusively that the workman had worked under the Management continuously within the meaning of Section 25-B of the I. D. Act. Thus it is clear that the workman has signally failed to prove that he was in continuous service under the Management for the requisite period of 240 days in 12 months preceding to the date of his termination so as to satisfy the requirement of Section 25-B of the I. D. Act.

11. The workman according to his own admission during his cross-examination was a daily wage worker. The workman has failed to prove that he was in continuous service under the Management within the meaning of Section 25-B of the I. D. Act. Consequently the Management was under no obligation to fulfil the requirement of Section 25-F of the I. D. Act while terminating the service of the workman and therefore, the issue No. (i) is answered to the effect that the action of the Management of U. P. State

Handloom Corporation Limited, Bhubaneswar in terminating the service of the workman Mr. M. R. Ahmed, Salesman with effect from 31st October, 1993 is legal and therefore, justified.

In view of my answer to issue No. (i), the workman is not entitled to any relief.

12. Hence the reference is answered as follows :

(i) The action of the Management of U. P. State Handloom Corporation Limited, Bhubaneswar in terminating the services of Mr. M. R. Ahmed, Salesman with effect from 31st October, 1993 is legal and justified; and (ii) the workman is not entitled to get any relief whatsoever.

Dictated and corrected by me.

S. K. Mohapatra
11-5-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S. K. Mohapatra
11-5-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor

N. C. RAY
Under-Secretary to Government